

FILED

AUG 11 2009

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JEFFERY E. WALKER,	)	
	)	
Plaintiff(s),	)	No. C 08-0801 CRB (PR)
	)	
vs.	)	ORDER
	)	
JANE LOVELLE, et al.,	)	(Doc # 70)
	)	
Defendant(s).	)	

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On May 11, 2009, the court granted defendants' motion to dismiss plaintiff's instant prisoner action for failure to exhaust properly available administrative remedies before filing suit, as required by 42 U.S.C. § 1997e(a), but denied defendants' similar motion to dismiss plaintiff's other prisoner action, see Walker v. Jones, No. C 08-0757 CRB (PR) (N.D. Cal. May 11, 2009) (order denying motion to dismiss).


In Walker v. Jones, the court found that plaintiff properly exhausted available administrative remedies because the uncontradicted facts in the record showed that plaintiff filed a grievance he did not appeal because he never received a copy of the denial and, under the sheriff's department's prisoner grievance process, "[if] a prisoner does not receive a response to a grievance filed

1 within 30 days of the filing, the prisoner shall assume that [h]us administrative  
2 remedies have been exhausted." Id. at 4 (citation omitted). In the instant case,  
3 Walker v. Lovelle, by contrast, the court found unpersuasive plaintiff's  
4 conclusory claim that he filed a grievance for which there was no record because  
5 the grievance was somehow lost. May 11, 2009 Order at 4.

6 Plaintiff moves for reconsideration on the ground that the logic behind the  
7 court's denial of the motion to dismiss in Walker v. Jones, should apply to Walker  
8 v. Lovelle. Plaintiff's motion (doc # 70) is DENIED. Whereas the  
9 uncontradicted evidence in the record in Walker v. Jones showed that plaintiff  
10 filed a grievance and never received a copy of its denial, the evidence in the  
11 record in Walker v. Lovelle did not show that plaintiff filed a grievance or that  
12 one ever existed. Plaintiff's conclusory claim that he filed a grievance for which  
13 there is no record (as opposed to all other grievances he alludes to in his two  
14 actions) because it was somehow lost is simply not persuasive. Cf. Wyatt v.  
15 Terhune, 315 F.3d 1108, 1119 (9th Cir. 2003) (in deciding motion to dismiss for  
16 nonexhaustion under § 1997e(a), court may look beyond pleadings and decide  
17 issues of fact).

18 SO ORDERED.

19 DATED: AUG 11 2009

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21 CHARLES R. BREYER  
22 United States District Judge  
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